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# **PRELIMINARY DRAFT**

## **No. 3191**

### **PREPARED BY**

### **LEGISLATIVE SERVICES AGENCY**

### **2008 GENERAL ASSEMBLY**

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#### **DIGEST**

**Citations Affected:** IC 33-23-5-13; IC 33-37; IC 33-38.

**Synopsis:** Judges' pensions. Allows a person serving as a full-time magistrate on July 1, 2010, and requires a person who begins serving as a full-time magistrate after that date, to become a participant in the judges' 1985 benefit system (1985 system). Allows magistrates who are participants in the 1985 system to purchase, at full actuarial cost, service credit for prior service covered by an Indiana public employees' retirement fund. After December 31, 2009, bases the computation of the annual retirement benefit for a participant in the 1985 system on the salary being paid for the office that the participant held at the time of the participant's separation from service. (Currently the computation is based on the salary being paid to the participant at the time of the participant's separation from service.) Increases the court administration fee from \$3.00 to \$4.50 and directs that the additional amount be paid into the judges' retirement fund.

**Effective:** July 1, 2008.



A BILL FOR AN ACT to amend the Indiana Code concerning pensions.

*Be it enacted by the General Assembly of the State of Indiana:*

SECTION 1. IC 33-23-5-13 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 13. **(a) Except as provided in subsection (b),** a magistrate may:

- (1) participate in the public employees' retirement fund as provided in IC 5-10.3; or
- (2) elect to remain in the judges' retirement system under IC 33-38 if the magistrate had previously participated in the system.

**(b) A person who:**

- (1) is serving as a full-time magistrate on July 1, 2010, and makes an election under IC 33-38-8-10.5; or**
- (2) begins serving as a full-time magistrate after July 1, 2010; shall, beginning January 1, 2011, participate in the judges' 1985 benefit system under IC 33-38-8.**

SECTION 2. IC 33-37-5-27, AS AMENDED BY P.L.80-2006, SECTION 16, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 27. (a) This subsection does not apply to the following:

- (1) A criminal proceeding.
- (2) A proceeding to enforce a statute defining an infraction.
- (3) A proceeding for an ordinance violation.

In each action filed in a court described in IC 33-37-1-1 and in each small claims action in a court described in IC 33-34, the clerk shall collect a court administration fee of ~~three four~~ **three** dollars ~~(~~\$3~~)~~ **and fifty cents (\$4.50).**

(b) In each action in which a person is:

- (1) convicted of an offense;
- (2) required to pay a pretrial diversion fee;
- (3) found to have committed an infraction; or
- (4) found to have violated an ordinance;

the clerk shall collect a court administration fee of ~~three four~~ **three** dollars



1 ~~(\$3)~~ and fifty cents (\$4.50).

2 SECTION 3. IC 33-37-7-9, AS AMENDED BY P.L.174-2006,  
3 SECTION 18, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
4 JULY 1, 2008]: Sec. 9. (a) On June 30 and on December 31 of each  
5 year, the auditor of state shall transfer to the treasurer of state ~~eight~~  
6 ~~nine~~ million ~~two hundred seventy-seven~~ **twenty-seven** thousand  
7 ~~twenty-three dollars (\$8,277,023)~~ **(\$9,027,023)** for distribution under  
8 subsection (b).

9 (b) On June 30 and on December 31 of each year, the treasurer of  
10 state shall deposit into:

11 (1) the family violence and victim assistance fund established by  
12 IC 12-18-5-2 an amount equal to eight and ~~ninety-nine~~  
13 ~~twenty-five~~ hundredths percent ~~(8.99%)~~ **(8.25%)**;

14 (2) the Indiana judges' retirement fund established by  
15 IC 33-38-6-12 an amount equal to ~~thirty-one~~ **thirty-six** and  
16 ~~eighteen~~ **eighty-six** hundredths percent ~~(31.18%)~~ **(36.86%)**;

17 (3) the law enforcement academy building fund established by  
18 IC 5-2-1-13 an amount equal to two and ~~eighty-six~~ **sixty-three**  
19 hundredths percent ~~(2.86%)~~ **(2.63%)**;

20 (4) the law enforcement training fund established by IC 5-2-1-13  
21 an amount equal to ~~eleven~~ **ten** and ~~fifty-one~~ **fifty-six** hundredths  
22 percent ~~(11.51%)~~ **(10.56%)**;

23 (5) the violent crime victims compensation fund established by  
24 IC 5-2-6.1-40 an amount equal to ~~thirteen~~ **twelve** and ~~thirty-seven~~  
25 ~~twenty-six~~ hundredths percent ~~(13.37%)~~ **(12.26%)**;

26 (6) the motor vehicle highway account an amount equal to  
27 ~~twenty-one~~ **twenty** and ~~eighty-four~~ **three** hundredths percent  
28 ~~(21.84%)~~ **(20.03%)**;

29 (7) the fish and wildlife fund established by IC 14-22-3-2 an  
30 amount equal to ~~twenty-seven~~ **twenty-five** hundredths percent  
31 ~~(27%)~~ **(.25%)**;

32 (8) the Indiana judicial center drug and alcohol programs fund  
33 established by IC 12-23-14-17 for the administration,  
34 certification, and support of alcohol and drug services programs  
35 under IC 12-23-14 an amount equal to one and ~~eighty-two~~  
36 ~~sixty-seven~~ hundredths percent ~~(1.82%)~~ **(1.67%)**; and

37 (9) the DNA sample processing fund established under  
38 IC 10-13-6-9.5 for the funding of the collection, shipment,  
39 analysis, and preservation of DNA samples and the conduct of a  
40 DNA data base program under IC 10-13-6 an amount equal to  
41 ~~eight~~ **seven** and ~~sixteen~~ **forty-nine** hundredths percent ~~(8.16%)~~  
42 **(7.49%)**;

43 of the amount transferred by the auditor of state under subsection (a).

44 (c) On June 30 and on December 31 of each year, the auditor of  
45 state shall transfer to the treasurer of state for deposit into the public  
46 defense fund established under IC 33-40-6-1:



- (1) after June 30, 2004, and before July 1, 2005, one million seven hundred thousand dollars (\$1,700,000); and
- (2) after June 30, 2005, two million seven hundred thousand dollars (\$2,700,000).

SECTION 4. IC 33-38-6-9 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 9. As used in this chapter, "participant" means a judge who participates in the fund. **After December 31, 2010, "participant" means a judge or full-time magistrate who participates in the fund.**

SECTION 5. IC 33-38-8-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 1. This chapter applies only to an individual who:

- (1) begins service as a judge after August 31, 1985;
- (2) **is serving as a full-time magistrate on July 1, 2010, and makes an election under section 10.5 of this chapter; or**
- (3) **begins service as a full-time magistrate after July 1, 2010.**

SECTION 6. IC 33-38-8-10 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 10. (a) A person who:

- (1) begins service as a judge after August 31, 1985; and
- (2) is not a participant in the fund;

shall become a participant in the fund.

(b) **A person who is serving as a full-time magistrate on July 1, 2010, and makes an election under section 10.5 of this chapter is, beginning January 1, 2011, a participant in the judges' 1985 benefit system under this chapter.**

(c) **A person who begins serving as a full-time magistrate after July 1, 2010, is a participant in the judges' 1985 benefit system under this chapter beginning on the later of the following:**

- (1) **January 1, 2011.**
- (2) **The date the person begins service as a full-time magistrate.**

SECTION 7. IC 33-38-8-10.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: **Sec. 10.5. A person who is serving as a full-time magistrate on July 1, 2010, may elect to become a member of the judges' 1985 benefit system under this chapter. An election under this section:**

- (1) **must be made in writing;**
- (2) **must be filed with the board, on a form prescribed by the board, before October 1, 2010; and**
- (3) **is irrevocable.**

SECTION 8. IC 33-38-8-12 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 12. (a) A participant who:

- (1) ceases service:
- (A) **as a judge; or**



(B) after December 31, 2010, as a judge or full-time magistrate;

other than by death or disability; and

(2) is not eligible for a retirement benefit under this chapter; is entitled to withdraw from the fund, beginning on the date specified by the participant in a written application. The date on which the withdrawal begins may not be before the date of final termination of employment or the date thirty (30) days before the receipt of the application by the board.

(b) Upon the withdrawal, the participant is entitled to receive the total sum contributed, payable within sixty (60) days from the date of the withdrawal application or in monthly installments as the participant may elect.

SECTION 9. IC 33-38-8-13, AS AMENDED BY P.L.28-2005, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 13. A participant whose employment as a judge, or after December 31, 2010, as a judge or full-time magistrate, is terminated is entitled to a retirement benefit computed under section 14 of this chapter, beginning on the date specified by the participant in a written application, if the following conditions are met:

(1) The date on which the benefit begins is not:

(A) before the date of final termination of employment of the participant; or

(B) the date thirty (30) days before the receipt of the application by the board.

(2) The participant:

(A) is at least sixty-two (62) years of age and has at least eight (8) years of service credit;

(B) is at least fifty-five (55) years of age and the participant's age in years plus the participant's years of service is at least eighty-five (85); or

(C) has become permanently disabled.

(3) The participant is not receiving a salary from the state for services currently performed as:

(A) a judge (as defined in IC 33-38-6-7); or

(B) a magistrate under IC 33-23-5.

SECTION 10. IC 33-38-8-14 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 14. (a) Benefits provided under this section are subject to IC 33-38-6-13 and section 20 of this chapter.

(b) A participant who:

(1) applies for a retirement benefit; and

(2) is at least:

(A) sixty-five (65) years of age; or

(B) fifty-five (55) years of age and meets the requirements under section 13(2)(B) of this chapter;



is entitled to an annual retirement benefit as calculated in subsection (c).

(c) The annual retirement benefit for a participant who meets the requirements of subsection (b) equals the product of:

(1) the salary:

**(A) before January 1, 2010, that was being paid to the participant at the time of the participant's separation from service; or**

**(B) after December 31, 2009, that was being paid for the office that the participant held at the time of the participant's separation from service; multiplied by**

(2) the percentage prescribed in the following table:

Participant's Years of Service	Percentage
8	24%
9	27%
10	30%
11	33%
12	50%
13	51%
14	52%
15	53%
16	54%
17	55%
18	56%
19	57%
20	58%
21	59%
22 or more	60%

If a participant has a partial year of service in addition to at least eight (8) full years of service, an additional percentage shall be calculated by prorating between the applicable percentages, based on the number of months in the partial year of service.

(d) Except as provided in section 13(2)(B) of this chapter and subsection (b)(2)(B), if a participant who applies for a retirement benefit has not attained sixty-five (65) years of age, the participant is entitled to receive a reduced annual retirement benefit that equals the benefit that would be payable if the participant were sixty-five (65) years of age reduced by one-tenth percent (0.1%) for each month that the participant's age at retirement precedes the participant's sixty-fifth birthday. This reduction does not apply to:

- (1) participants who are separated from service because of permanent disability;
- (2) survivors of participants who die while in service after August 1, 1992; or
- (3) survivors of participants who die while not in service but



while entitled to a future benefit.

SECTION 11. IC 33-38-8-22 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 22. (a) This section applies to a person who:

(1) is:

(A) a judge; **or**

(B) **after December 31, 2010, a judge or full-time magistrate;**

participating under this chapter;

(2) before becoming:

(A) a judge; **or**

(B) **after December 31, 2010, a judge or full-time magistrate;**

was appointed by a court to serve as a full-time referee, full-time commissioner, or full-time magistrate;

(3) was a member of the public employees' retirement fund during the employment described in subdivision (2); and

(4) received credited service under the public employees' retirement fund for the employment described in subdivision (2).

(b) If a person becomes a participant in the judges' 1985 benefit system under section 1 of this chapter, credit for prior service by the judge, **or after December 31, 2010, by the judge or full-time magistrate**, as a full-time referee, full-time commissioner, or full-time magistrate shall be granted under this chapter by the board if:

(1) the prior service was credited under the public employees' retirement fund;

(2) the state contributes to the judges' 1985 benefit system the amount the board determines necessary to amortize the prior service liability over a period determined by the board, but not more than ten (10) years; and

(3) the judge **or full-time magistrate** pays in a lump sum or in a series of payments determined by the board, not exceeding five (5) annual payments, the amount the judge **or full-time magistrate** would have contributed if the judge **or full-time magistrate** had been a member of the judges' 1985 benefit system during the prior service.

(c) If the requirements of subsection (b)(2) and (b)(3) are not satisfied, a participant is entitled to credit only for years of service after the date of participation in the **judges'** 1985 benefit system.

(d) An amortization schedule for contributions paid under subsection (b)(2) or (b)(3) must include interest at a rate determined by the board.

(e) The following provisions apply to a person described in subsection (a):

(1) A minimum benefit applies to participants receiving credit in the judges' 1985 benefit system from service covered by the



public employees' retirement fund. The minimum benefit is payable at sixty-five (65) years of age or when the participant is at least fifty-five (55) years of age and meets the requirements under section ~~13(2)(b)~~ **13(2)(B)** of this chapter and equals the actuarial equivalent of the vested retirement benefit that is:

(A) payable to the member at normal retirement under IC 5-10.2-4-1 as of the day before the transfer; and

(B) based solely on:

(i) creditable service;

(ii) the average of the annual compensation; and

(iii) the amount credited under IC 5-10.2 and IC 5-10.3 to the annuity savings account of the transferring member as of the day before the transfer.

(2) If the requirements of subsection (b)(2) and (b)(3) are satisfied, the board shall transfer from the public employees' retirement fund to the judges' 1985 benefit system the amount credited to the annuity savings account and the present value of the retirement benefit payable at sixty-five (65) years of age or at least fifty-five (55) years of age under section ~~13(2)(b)~~ **13(2)(B)** of this chapter that is attributable to the transferring participant.

(3) The amount the state and the participant must contribute to the judges' 1985 benefit system under subsection (b) shall be reduced by the amount transferred to the judges' 1985 benefit system by the board under subdivision (2).

(4) If the requirements of subsection (b)(2) and (b)(3) are satisfied, credit for prior service in the public employees' retirement fund as a full-time referee, full-time commissioner, or full-time magistrate is waived. Any credit for the prior service under the judges' 1985 benefit system may be granted only under subsection (b).

(f) To the extent permitted by the Internal Revenue Code and the applicable regulations, the judges' 1985 benefit system may accept, on behalf of a participant who is purchasing permissive service credit under subsection (b), a rollover of a distribution from any of the following:

(1) A qualified plan described in Section 401(a) or Section 403(a) of the Internal Revenue Code.

(2) An annuity contract or account described in Section 403(b) of the Internal Revenue Code.

(3) An eligible plan that is maintained by a state, a political subdivision of a state, or an agency or instrumentality of a state or political subdivision of a state under Section 457(b) of the Internal Revenue Code.

(4) An individual retirement account or annuity described in Section 408(a) or Section 408(b) of the Internal Revenue Code.

(g) To the extent permitted by the Internal Revenue Code and the





applicable regulations, the judges' 1985 benefit system may accept, on behalf of a participant who is purchasing permissive service credit under subsection (b), a trustee to trustee transfer from any of the following:

- (1) An annuity contract or account described in Section 403(b) of the Internal Revenue Code.
- (2) An eligible deferred compensation plan under Section 457(b) of the Internal Revenue Code.

SECTION 12. IC 33-38-8-23 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 23. (a) This section applies only to a person who:

(1) is:

(A) a judge; or

**(B) after December 31, 2010, a judge or full-time magistrate;**

participating under this chapter;

(2) before becoming:

(A) a judge; or

**(B) after December 31, 2010, a judge or full-time magistrate;**

was a member of a public employees' retirement fund;

(3) received credited service under a public employees' retirement fund for the employment described in subdivision (2), and the credited service is not eligible for prior service credit under section 22 of this chapter;

(4) has not attained vested status under a public employees' retirement fund for the employment described in subdivision (2); and

(5) has at least eight (8) years of service credit in the judges' retirement system.

(b) If a person becomes a participant in the judges' 1985 benefit system under this chapter, credit for service described in subsection (a) shall be granted under this chapter by the board if:

(1) the prior service was credited under a public employees' retirement fund; and

(2) the judge **or full-time magistrate** pays in a lump sum or in a series of payments determined by the board, not exceeding five (5) annual payments, the amount determined by the actuary for the **judges'** 1985 benefit system as the total cost of the service.

(c) If the requirements of subsection (b) are not satisfied, a participant is entitled to credit only for years of service after the date of participation in the **judges'** 1985 benefit system.

(d) An amortization schedule for contributions paid under this section must include interest at a rate determined by the board.

(e) If the requirements of subsection (b) are satisfied, the appropriate board shall transfer from the retirement fund described in



1 subsection (a)(2) to the judges' 1985 benefit system the amount  
 2 credited to the judge's **or full-time magistrate's** annuity savings  
 3 account and the present value of the retirement benefit payable at  
 4 sixty-five (65) years of age that is attributable to the transferring  
 5 participant.

6 (f) The amount a participant must contribute to the judges' 1985  
 7 benefit system under subsection (b) shall be reduced by the amount  
 8 transferred to the judges' 1985 benefit system by the appropriate board  
 9 under subsection (e).

10 (g) If the requirements of subsection (b) are satisfied, credit for prior  
 11 service in a public employees' retirement fund is waived.

12 (h) To the extent permitted by the Internal Revenue Code and the  
 13 applicable regulations, the judges' 1985 benefit system may accept, on  
 14 behalf of a participant who is purchasing permissive service credit  
 15 under subsection (b), a rollover of a distribution from any of the  
 16 following:

17 (1) A qualified plan described in Section 401(a) or Section 403(a)  
 18 of the Internal Revenue Code.

19 (2) An annuity contract or account described in Section 403(b) of  
 20 the Internal Revenue Code.

21 (3) An eligible plan that is maintained by a state, a political  
 22 subdivision of a state, or an agency or instrumentality of a state or  
 23 political subdivision of a state under Section 457(b) of the  
 24 Internal Revenue Code.

25 (4) An individual retirement account or annuity described in  
 26 Section 408(a) or Section 408(b) of the Internal Revenue Code.

27 (i) To the extent permitted by the Internal Revenue Code and the  
 28 applicable regulations, the judges' 1985 benefit system may accept, on  
 29 behalf of a participant who is purchasing permissive service credit  
 30 under subsection (b), a trustee to trustee transfer from any of the  
 31 following:

32 (1) An annuity contract or account described in Section 403(b) of  
 33 the Internal Revenue Code.

34 (2) An eligible deferred compensation plan under Section 457(b)  
 35 of the Internal Revenue Code.

